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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTINA MARIE ZEHNDER,

Defendant and Appellant.

A123227

(Solano County
Super. Ct. No. VCR199651)

Defendant Christina Marie Zehnder pleaded no contest to one count of violating Health and Safety Code section 11351.5. Her counsel has filed a brief raising no issues and asks this court to conduct an independent review of the record to identify any issues that could result in reversal or modification of the judgment if resolved in defendant's favor. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel declares he notified defendant that she could file a supplemental brief raising any issues she wishes to call to this court's attention. No supplemental brief has been received.

Upon independent review of the record, we conclude no arguable issues are presented for review and affirm.

I. FACTS

In December 2008, Vallejo Police Officer Rodriguez obtained a warrant to look for items related to the sale of cocaine or cocaine base in four vehicles owned by Wendell Taylor. He also had information from a confidential informant that Taylor had a girlfriend named "Christina" who "also sold drugs with Mr. Taylor."

Officer Rodriguez went to a Motel 7 where Taylor was staying, and saw a woman leaning into one of the cars for which he had obtained a search warrant. He asked her to step away, which she did. She identified herself as “Christina,” and said she was staying in room 225 with her boyfriend.

Officer Rodriguez conducted a pat-search of defendant because he had information she was associated with Taylor, and actively involved in selling cocaine. He knew from his experience that it is common for persons involved in drug sales to be armed. When he ran his hand over her right pocket he felt numerous pieces of small hard rock-like objects wrapped inside plastic.¹ He immediately concluded the objects felt like rock cocaine, and reached in to remove a plastic bag containing eight individually wrapped pieces of suspected cocaine. Officer Rodriguez then handcuffed defendant and placed her under arrest. After he handcuffed her, Officer Rodriguez also found a small baggie containing 0.97 grams of crystal methamphetamine on her person.

Pursuant to a search warrant, Officer Rodriguez and other officers searched the motel room defendant shared with Wendell Taylor, and found a digital scale, cash, sandwich bags, a notebook, and other items.

Defendant was charged by criminal complaint with one count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)).

Defendant filed a motion to suppress evidence under Penal Code section 1538.5. Defendant contended Officer Rodriguez did not have reasonable suspicion to detain her simply because she was near a car for which he had a search warrant, nor did he have grounds to conduct the pat-down search. She also argued, even if the pat-down search was lawful, Officer Rodriguez exceeded the scope of a lawful pat-down by manipulating defendant’s pockets and seizing contents that, if touched only by patting, would not have felt like a weapon or contraband.

¹ Defendant testified that Officer Rodriguez did not pat her pockets, rather he “proceeded to kind of munch at my pockets,” meaning he squeezed them to feel the contents.

At the preliminary hearing, the court denied the motion to suppress and held defendant to answer. The court found Officer Rodriguez had probable cause to believe drugs and guns were in the van, saw defendant leaning into it, and therefore had grounds to detain defendant, and perform the pat-down search. The court further found the search did not exceed the scope of a lawful pat-down.

The district attorney filed an information on February 23, 2008, alleging the same charges as the complaint. Defendant filed a motion to dismiss the charges under Penal Code section 995, and raised the same issue she had presented in the earlier motion to suppress evidence. The court denied the motion.

On October 30, 2008, defendant pleaded no contest to possession of cocaine base for sale. In exchange, the prosecutor agreed to dismiss the remaining charge, and that defendant would be granted probation subject to the condition that she serve 120 days in county jail.

The court suspended imposition of sentence and placed defendant on probation for three years, conditioned on 120 days in county jail, with credit served for 86 days.

Defendant filed a timely notice of appeal, and did not seek a certificate of probable cause.

II. ANALYSIS

By entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crime, and is not entitled to review of any issue that goes to the question of guilt. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Without a certificate of probable cause, defendant cannot contest the validity of her plea. Therefore, the only issues cognizable on appeal are issues relating to the denial of a motion to suppress or issues relating to matters arising after the plea was entered. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b)(4).)

Upon our independent review of the record we find no meritorious issues that require further briefing on appeal. The court's ruling on the motion to suppress is supported by substantial evidence, and by established legal precedent. (*See Minnesota v. Dickerson* (1993) 508 U.S. 366, 375–376; *People v. Thurman* (1989) 209 Cal.App.3d

817, 826; *People v. Lee* (1987) 194 Cal.App.3d 975, 984.) We also find no sentencing errors. The grant of probation, including the terms and conditions of probation, were consistent with the terms of the plea.

III. CONCLUSION

The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Graham, J.*

* Retired judge of the Superior Court of Marin County assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.